

Docket No. 396.43260X00
Serial No. 10/701,440
September 9, 2005

REMARKS

Applicants have amended their claims in order to further clarify the definition of various aspects of the present invention. Specifically, Applicants have amended claim 1 to recite the additional step of continuing the melt polymerization in the next and subsequent batches under conditions determined by results of the estimation (the estimation being provided in the step of estimating). Applicants have further amended claim 1 to recite, in paragraph form, the step of developing at least one estimating equation; the step of estimating, so as to provide an estimation, using the at least one estimating equation; and the step of continuing the melt polymerization, and to make clearer the estimating equations set forth in the step of developing at least one estimating equation.

In connection with amendments to claim 1, note, for example, the paragraph bridging pages 35 and 36 of Applicants' specification.

The rejection of claim 1 under the second paragraph of 35 USC 112, as being indefinite, set forth on page 2 of the Office Action mailed June 9, 2005, is respectfully traversed, especially insofar as applicable to claim 1 as presently amended.

Specifically, the Examiner contends that claim 1 is indefinite "due to the claims not reciting positive process steps". However, note that claim 1 as previously considered, and claim 1 as presently amended, recite a step of developing at least one estimating equation selected from a specific group thereof; a step of estimating, so as to provide an estimation, using the at least one estimating equation; and a step of continuing the melt polymerization in the next and subsequent batches under conditions determined by results of the estimation. It is respectfully submitted that the recited steps in claim 1 are a recitation of positive process steps, sufficiently definite so as to satisfy requirements of the second paragraph of 35 USC 112.

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Moreover, note that claim 1 recites a production method of polyamide by batch melt polymerization, and include, as step (3), a step of continuing the melt polymerization in the next and subsequent batches under conditions determined by results of the estimation recited in step (2). Clearly, the present claims recite a production method including positive processing steps consistent with the claims as a whole.

Applicants respectfully traverse the conclusion by the Examiner that claim 1 does not give "clear direction for one of ordinary skill in the art to determine what variable would have to be considered to ascertain the metes and bounds of the claim limitations", particularly insofar as this conclusion is applicable to the claims as presently amended. Again, it is emphasized that claim 1 recites steps (1) -- (3), giving interrelationships therebetween; and it is respectfully submitted that claim 1 is sufficiently definite such that one of ordinary skill in the art would know whether any specific production method of polyamide fell within or outside of the scope of the present claims. Under the present circumstances, it is respectfully submitted that 35 USC 112, second paragraph, requires nothing more. See In re Moore, 169 USPQ 236 (CCPA 1971).

Applicants respectfully traverse the rejection of all their claims under the judicially created doctrine of obviousness-type double patenting, as being unpatentable over claims 1-18 of U.S. Patent No. 6,303,741. As will be established in the following, it is respectfully submitted that all of the claims of No. 6,303,741 are directed to a solid phase-polymerized polyamide which is produced by solid phase polymerization of a melt-polymerized polyamide obtained by polycondensing in molten state a specified diamine component and a specified dicarboxylic acid component; and that this solid phase-polymerized polyamide in the claims of

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No. 6,303,741 would have neither taught nor would have suggested the production method of polyamide by batch melt polymerization as in the present claims, including the step of developing at least one estimating equation, the step of estimating, and the step of continuing the melt polymerization, as in claim 1; or the developing and determining steps of claim 16; or the other features of the present invention as in the dependent claims.

Initially, it is emphasized that No. 6,303,741 claims a solid phase-polymerized polyamide, not a production method of polyamide. It is respectfully submitted that the polyamide as claimed in No. 6,303,741 does not provide a basis for conclusion of obviousness of the present claimed method in light thereof.

The Examiner's attention is respectfully directed to Manual of Patent Examining Procedure (MPEP) 806.05(f), discussing distinctness between a process of making and the product made. Note that distinctness can be shown where (A) the process as claimed is not an obvious process of making the product and the process as claimed can be used to make other and different products; or (B) the product as claimed can be made by another and materially different process. It is respectfully submitted that both (A) and (B) are satisfied with respect to the presently claimed subject matter, as compared with the subject matter claimed in No. 6,303,741. Thus, clearly the presently claimed process including, inter alia, the development of the estimating equation, would not have been disclosed, nor would have been suggested, by the solid phase polyamide of No. 6,303,741; and the process as claimed can be used to make products other than the specified solid phase-polymerized polyamide of the claims in No. 6,303,741. In addition, the product claimed in No. 6,303,741 can be made by another and materially different process, e.g., without performing developing and estimating steps as in the present claims.

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It is respectfully submitted that as the claims of the above-identified application are distinct from the subject matter claimed in No. 6,303,741, the obviousness-type double patenting rejection is clearly improper.

The Examiner's contention that the present claims and the claims of No. 6,303,741 claim overlapping subject matter "that is not patentably distinct", is respectfully traversed. As the present claims are directed to a method and all claims of No. 6,303,741 are directed to solid phase-polymerized polyamide, Applicants specifically traverse the contention by the Examiner that the present claims and the claims in No. 6,303,741 claim overlapping subject matter. Moreover, as shown previously, clearly the subject matter of the present claims and the subject matter of U.S. Patent No. 6,303,741 are distinct from each other, as is clear from MPEP 806.05(f).

The contention by the Examiner that the instantly claimed process for producing a polyamide by batch melt polymerization would necessarily produce the claimed solid-phase polymerized polyamide of the patent is respectfully traversed. Note that the claims of No. 6,303,741 recite specific amounts of various components; and it is respectfully submitted that, especially in view thereof, the presently claimed subject matter would not necessarily produce the polyamide claimed in the U.S. patent.

Furthermore, it is again emphasized that the present claims are directed to a production process, including estimation of properties of the polyamide being produced in, e.g., determining conditions of the solid phase polymerization; or continuing the melt polymerization, in view of various estimations. Clearly, the subject matter claimed in No. 6,303,741 would have neither taught nor would have suggested the presently claimed process.

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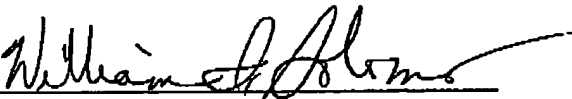
The undersigned notes the statement by the Examiner that a timely filed Terminal Disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome the double patenting rejection. It is respectfully submitted that since the double patenting rejection is clearly improper, Applicants need not presently file the Terminal Disclaimer.

In view of the foregoing comments and amendments, reconsideration and allowance of all claims presently pending in the above-identified application are respectfully requested.

Applicants request any shortage of fees due in connection with the filing of this paper be charged to the Deposit Account of Antonelli, Terry, Stout & Kraus, LLP, Deposit Account No. 01-2135 (case 396.43260X00), and credit any excess payment of fees to such Deposit Account.

Respectfully submitted,

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